Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

THARWAT M. HAMAMCY,

Petitioner, Pro se

v.

TEXAS STATE BOARD OF MEDICAL EXAMINERS, *

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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* See page i #5 and page 7 #1, a,b,c,d.

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37 pp

QUESTIONS FOR REVIEW

1- Whether the four reasons mentioned in the opinion of the Court of Appeals to dismiss this case, are false, erroneous, are not applicable to this case, and are conflicting with the District Court's jurisdiction on the case pursuant to 28 U.S.C.A. 1331.

2- Whether the Court of Appeals for the Fifth Circuit entered a decision in conflict with the Court of Appeals for the third Circuit on the same legal issue as in this case. HAFER, vs. MELO, et al, 90-681 Vol. 502 U.S., Part 1, Page 21-31.

3- Whether the Supreme Court will conclude that this case is unprecedented to the Lower Courts, after presentation of the questions for review, and after presentation of the facts material in consideration of these questions. Whether the Supreme Court will also conclude that the erroneous findings in this case are partially a result of the unprecedented merits and material facts of this case to the Lower Courts.

4- Whether the lack of exercising the District Court's jurisdiction on this case, has allowed Respondent to invade on public's rights, to supercede federal laws by acting under color of law in order to displace and to isolate Petitioner or any other physicians, from the professional medical communities that serve the public, and to deprive the public from the medical services of these qualified health care providers.

5- Whether the lower courts erred by departing from the usual course of

judicial proceedings in serving justice, by ignoring the truthful facts in court records that this case is a suit against state officials of the medical board as individual members of the board, and it is not a suit against the state medical board itself per se.

6- Whether the investigative report affirmed that this particular case falls under the District Court's jurisdiction pursuant to 28 U.S.C.A. 1331, and whether this report proved beyond any reasonable doubt that Respondent acted under color of law, in conflict with federal law, in order to invent a false charge against Appellant, by lying and by fraud, in violation of 42 U.S.C. 1983.

7- Whether the U.S. District Court acted within the usual course of judicial conduct by taking five years to dismiss this case and citing false, erroneous and conflicting reasons for this unreasonably long delayed decision, despite the fact that the official investigative report proved without any reasonable doubt that this case falls under the District Court's jurisdiction pursuant to 28 U.S.C.A. 1331, and that the Court's most Senior Honorable Judge Vela did not dismiss the case during the first three years when the case was under his care.

8- Whether this particular case falls under the exception to the Eleventh Amendment carved out by the U.S. Supreme Court, because of Respondent's actions under color of law which violated Federal Law and violated Petitioner's right to due process and equal protection under the law, with the result of causing total irreparable damages to Petitioner's

professional status and qualifications.

9- Whether the declartions of the U.S. Supreme Court allow a petition for an injunctive relief to be filed in federal court, against state officials as individuals, based on federal law grounds, and based on causing total irreparable damages, particularly after Petitioner has exhausted all remedies with the state.

10- Whether the issue of res judicata and collateral estoppel proved to be false and has no application to this case, and Whether the lower courts departed from the usual course of judicial proceedings in order to create, under color of law, a false existence of this issue to make up a reason to dismiss the case.

PARTIES TO THE PROCEEDINGS

1- THARWAT M. HAMAMCY,.....
.....Petitioner, Pro se

2- TEXAS STATE BOARD OF MEDICAL EXAMINERS*
.....Respondent
* See page 1, No. 1, and page...

COURT OF APPEALS CASE No..... 99-40687

U.S. DISTRICT COURT No.....B- 94-CV-55

Petitioner has no corporation
involved in this petition.

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1- Declarations of the U.S. Supreme Court

2- Federal Health Register, Vol. 51, No. 116, Health Rules and Regulations, Dept. of Health and Human Services. Standard qualifications of health care providers for hospital staff privileges to serve the public.

3- HAFER vs. MELO, et al, 90-681, Vol. 502 U.S. Part 1, Page 21-31.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Pro se, Tharwat M. Hamamcy, respectfully prays that a writ of certiorari to be issued to review the opinion and judgment of the U.S. Court of Appeals for the Fifth Circuit, entered in February 17, 2000.

OPINIONS ENTERED

1- The opinion of the Court of Appeals for the Fifth Circuit to dismiss the case is reprinted in [App. (A) p 1]. The Court has determined that this opinion should not be published.

2- The final order of the U.S. District Court to dismiss the case is reprinted in [App. (B) p 2].

JURISDICTION

Jurisdiction of the Honorable United States Supreme Court is invoked under United States Codes 28 U.S.C., as a matter of judicial discretion, to issue a writ of certiorari in order to review the opinion entered on February 17, 2000 by the United States Court of Appeals for the Fifth Circuit, where the Court of Appeals had reviewed under its jurisdiction, the final order entered on May 28, 1999 by the United States District Court for the Southern District of Texas, Brownsville Division.

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

1- The U.S. Supreme Court declared that the Eleventh Amendment does not bar a suit for an injunctive relief against state officials in their official capacity. A court may afford relief against state officials based on federal law grounds, specifically when named state officials violate the Constitution. EX PARTE YOUNG, 209 U.S. at 123, 155-157.

2- The U.S. Supreme Court carved out an exception to the Eleventh Amendment immunity, EX PARTE YOUNG, 209 U.S. 123, (1908). A suit against a state or state officials to enjoin the enforcement of a state law alleged to be contrary to federal law is not barred by the Eleventh Amendment. EX PARTE YOUNG, 209 U.S. at 148-49.

4- FEDERAL HEALTH REGISTER, Health Rules and Regulations: Qualifications of Physicians for serving the public and for hospital staff privileges, Vol. 51, No. 116, Health Rules and Regulations, Dept. of Human Services, [App. (C) page 3].

STATEMENT OF THE CASE

The following presentation is relevant to the facts material to consideration of the questions in this case, and to the proceedings that took place in the lower courts, then to be followed by the facts material for consideration in the questions presented for review:

1- Petitioner was board qualified general surgeon with additional training in the subspecialty of cardiovascular surgery. Petitioner came to Texas and aquired his medical and surgical license in July 1982.

2- In early 1983, Petitioner's attorney, Mr. Gary Hagman, contacted Respondent requesting him to verify from his records what are the truthful information about Petitioner's qualifications as a surgeon, which were reported to the hospitals as to be "unknown". Respondent declined to release or to verify these information to Petitioner's attorney, although these information are considered public records under the law, and Petitioner has the right to access his own records at Respondent's offices. Thus, Respondent failed to enforce the rules, regulations, and bylaws that pertain to Petitioner's medical license and professional qualifications in order to be legally allowed to serve the public at the hospitals according to the bylaws.

3- Accordingly, Petitioner could not obtain hospital staff privileges, [JOHNSON vs. MISERICORDIA COMMUNITY HOSPITAL, 301 N.W. 2d, 156, Supreme Court of Wis., Jan. 6, 1981], because federal rules for health care do not allow a physician to be licensed in any state, or to have hospital staff privileges in any state, when his qualifications are reported to the hospitals to be unknown. These information must be verified according to Respondent's bylaws, in order that Petitioner can legally be allowed or not, to continue to serve the public and to get hospital staff privileges, and in order to prevent

further damages to Petitioner's professional qualifications, so his license can be valid to allow him to get hospital staff privileges, and to serve the public, while the public will have trust in Petitioner's qualifications. Because of these circumstances, Petitioner was displaced and isolated from the professional medical communities that serve the public, and was forced to be confined to his own private medical center in Laguna Vista, Texas. In addition, Petitioner totally lost his chance to be certified by the American Board of Surgery, and by the American College of Surgeons. Petitioner also sustained extensive professional, financial and emotional damages. This could have been avoided if Respondent acted in good faith according to the state and federal bylaws. However, Respondent chose by his own decision, to act recklessly under color of law, in violation of 42 U.S.C. 1983, by conducting fraud and lying, to invent a false charge against Petitioner, in order to take back the license from Petitioner, since Respondent will be liable and responsible, under state and federal laws, if Petitioner will continue to serve the public in his own medical office while his qualifications are publicly "unknown".

4- Petitioner was then forced for 11 years to be confined to his private office serving the public without hospital staff privileges, because his medical license and his professional qualifications are considered by the hospitals to be illegal according to state and federal laws. Petitioner also has completely lost his certification by the American Board of Surgery and American College of Surgeons.

5- Under federal law, Respondent then became in violation of the state and federal bylaws for giving a license to Petitioner, and for allowing him to serve the public for several years years while his qualifications are unknown. Meanwhile, Respondent became legally responsible, and became legally liable for causing total irreparable damages to Petitioner, and became liable for violation of public's rights.

6- Respondent then started to invent a false charge, under color of law, against Petitioner in order to take back the license from Petitioner. It took Respondent more than two years, (Oct 1986 to Dec 1988), to prepare and structure his false plan before he notified Petitioner by his first letter dated Dec 22, 1988. Respondent used fraud and lying in order to document that he received complaints indicating that Petitioner violated the medical practice act and inflicted injury to nine patients.

7- At the administrative hearings, Respondent withdrew the charge of one of the nine patients in order to prevent the exposure of his fraud and lying. Petitioner cross examined Respondent's three expert medical witnesses who all, under Petitioner's cross examination, unanimously testified that Petitioner did not cause any violation of the malpractice act, and did not cause any injury to any one of these nine patients, despite the fact that their duty is to prove that Petitioner is guilty. [App (G) p 5].

8- It was also published in the local newspapers that nine patients charged Petitioner and filed complaints to the

medical board against him. [App (F) p 5]. It is sufficient to say here that a layman can recognize it cannot happen that nine patients decide to appear at one time together, two and half years after being treated, to charge and to file a complaint about their medical treatment that took place two and half years ago. This is apart from the fabricated composition of the false charges themselves that have no truth or substance whatsoever.

9- Petitioner exhausted all remedies of the appellate procedures with the State Courts according to Respondent's bylaws. Petitioner was denied his day in court in the State Courts to hear his appeal, despite Respondent's bylaws that the appeal must be heard in the State District Court acting as an Appellate Court from Respondent's Administrative Hearing Court acting as a lower court.

10- Petitioner filed this case and case No. B-94-211 in the U.S. District Court against the named State Officials. Petitioner also submitted an official investigative report, taken under oath from the nine patients who allegedly filed complaints against Petitioner. [App (H) p 5]. These patients unanimously testified voluntarily under oath, that they did not file any complaint against Petitioner to the Medical Board, or to any other party.

11- The U.S. District Court kept the case for five years then dismissed it by the erroneous application of the Eleventh Amendment, and by disregarding the jurisdiction of the court pursuant to 28 U.S.C.A. 1331.

12- Petitioner is now being deprived

from his equal opportunities in all the United States, as a result of Respondent's illegal act under color of law. Petitioner now is being displaced and isolated from his peers in the professional medical communities anywhere in the United States. Petitioner also lost his certification by the American Board of Surgery, and by the American College of Surgeons.

FACTS MATERIAL TO QUESTIONS PRESENTED FOR REVIEW

1. (a)- The lower courts erroneously named Respondent as the Texas State Board of Medical examiners. Records on file with the District Court show that this case No. B-94-55, was carried on in the District Court as a case against all individual members of the board, et al, in connection with case No. B-94-211, based on the fact that all individual members of the board were named and served each separately as individuals in case No. B-94-211 filed by Petitioner Pro se, [App (D) p 4]. Records of court hearings show that Honorable Judge Fidencio Garza, Jr., decided to process and discuss the two cases together at the hearings. This case No. B-94-55 was filed by Petitioner's attorney, when he came on board, in connection to Petitioner's filing, in order to address some points to the board members, and to fill some gaps in petitioner's filing. Later on, Petitioner's attorney was relieved from the case by court order, and the two cases continued in court under the title as filed by Petitioner. Both Petitioner and Respondent continued to

file all the motions with the title against all individual members of the board, et al, as shown in court records. The District Court continued to proceed with the case as such with no objection. When the case was dismissed, the Court still wrote "et al" following Respondent's title, [App (L) p 7].

(b)- Respecting the Court proceedings, Petitioner did not want to look irrational by not trusting the Court if he repeats again serving each individual member of the board after his attorney was relieved by court order. Meanwhile, motions filed by both parties were acceptable to the court as filed against all individual members of the board, et al. The case continued in court as such for five years until it was dismissed on May 28, 1999.

(c)- Court records show that Petitioner filed a motion to the District Court, requesting the Court to forward to the Court of Appeals, the correct title of the the case, [App (K) p 7]. The District Court responded that Petitioner is liable to be sanctioned, and it is up to the Court of Appeals to make such a request. [App (L) p 7]. The Court of Appeals did not make a request to the District Court to verify the title, and ended up by adopting an erroneous title to the case.

(d)- The District Court also erred in writing the title of the civil docket of the case to the Court of Appeals, by writing "et al" following Petitioner's name instead of Respondent's name which was also incompletely written, [App (M) p 8]. Petitioner has never been "et al" in this case. Court records show that the District Court is negligent in writing a

correct title, and that both courts erred to conform with the correct title in the records. The Court of Appeals could have, and should have, questioned this important matter that is conflicting with the records, since changing the title of the case is considered a deviation from the normal course of judicial proceedings.

2. (a)- Records in the District Court show that Petitioner has filed an official investigative report, taken under oath and admissible in court as evidence beyond any reasonable doubt, [App (H) p 5]. The alleged nine patients, have testified in the report that they did not file any complaint against Petitioner, contrary to the fact that Respondent has notified Petitioner by letters, [App (E) p 4], that he received complaints against Petitioner. Meanwhile, Respondent failed to produce any other complainer or accuser against Petitioner.

(b)- Respondent acted by lying under color of law, and by inventing a false charge against Petitioner. At the hearing of February 28, 1995, Honorable Judge Fidencio Garza, Jr. stated that he knows that no patients filed complaints against Petitioner. The presumption of regularity has been rebutted, and Respondent's credibility was lost at that hearing, in addition to the investigative report presented to Court. The District Court by now should have recognized not to extend anymore courtesy to Respondent. If this factual finding was not erroneously ignored and was not set aside by the District Court, then the Eleventh Amendment cannot be applicable to dismiss the case.

(c)- The Honorable U. S. Supreme Court did not declare that the Eleventh Amendment can be applied to protect the state or state officials for an action conducted by lying under color of law, or for an action conducted in conflict with federal law, because in such situation, then the exception to Eleventh Amendment will apply. The U.S. Supreme Court declared that the immunity applies only when the state or state officials are acting legally under the jurisdiction of their state laws and federal laws, otherwise the Exception to Eleventh Amendment will apply

3. (a)- Court records show that this case was filed in April 1994 and was dismissed in May 28, 1999, [App (B) p 3], after five years of hearings and litigation in court. If the Eleventh Amendment was sufficient reason to dismiss the case, that should have been evident without any doubt within the first three to four months or so, otherwise the reasons are sufficient enough to keep the case for five years in court. The Court of Appeals erred by choosing not to question why did this case continued in court for five years under these circumstances, and why was it dismissed in conflict with the jurisdiction of the District Court pursuant to 28 U.S.C.A. 1331.

(b)- For the first three years this case was under the care of the Senior Honorable Judge Vela. His Honor declared that the case may fall under the general jurisdiction of the District Court pursuant to 28 U.S.C.A. 1331. His Honor did not dismiss this particular case, despite the fact that he denied the motions to clean the docket, but he still

ordered that any party may re-urge any of the motions filed if they wish to, [App (J) p 6].

(c)- Logic indicate that this particular case should have continued to be under the care of Honorable Judge Vela who had the chance to know this particular case for three years with its different issues and additional evidences, and that he did not take the Eleventh Amendment as a reason to dismiss it. The case was transferred to the care of the new Honorable Judge Hilda Tagle when she came to the Court. The case was kept dormant for one and half years until Petitioner inquired to the court about the case.

(d)- It is reasonable to conclude that, in a usual course of proceedings, it does not take five years to find out that the case should be dismissed because of the Eleventh Amendment. In this case, the presumption of regularity has been rebutted with sufficient evidence beyond any reasonable doubt. This case falls under the Exception to the Eleventh Amendment that precludes the application of the Eleventh Amendment itself to the case, since it is proved that Respondent acted illegally with fraud and lying under color of law, in conflict with federal law, by wanton and reckless manner of abusing power in office in violation of 42 U.S.C. 1983, with the result of depriving Petitioner from his equal opportunities in Texas, and in all the United States.

4- In conclusion of law, the fact is that the Eleventh Amendment cannot be applicable to this case, because the Exception to the Eleventh Amendment is applicable to this case. Respondent made a

law unto himself, and by his own choice, conducted an illegal act of fraud and lying in conflict with state and federal laws, in order to accuse Petitioner with an invented false charge, in violation of 42 U.S.C. 1983.

5- The U.S. Court of Appeals for the Third Circuit, reversed the decision of the U.S. District Court in the case of HAFER v. MELO, et al, 90-681, Vol 502 U.S. Part 1, page 21-31. The similarity of this case to Petitioner's case is that both U.S. District Courts erroneously dismissed these two cases based on the Eleventh Amendment. The U.S. Court of Appeals for the Third Circuit reversed the District Court's decision based on the fact that Barbara Hafer, as the state auditor official, acted under color of law and abused her power in office in order to fire Melo and his group from their official positions. It did not make any difference to the Court of Appeals why Barbara Hafer wanted to fire them. Melo and his group filed in Federal Court directly without even exhausting any State remedies, while Petitioner first exhausted all State remedies, and also proved without any reasonable doubt that the presumption of regularity has been rebutted, by confirming the fact that Respondent was lying under color of law, and abusing power in office.

6- The U.S. Supreme Court held that the Eleventh Amendment does not bar a claim for injunctive relief against state officials in their official capacity. A court may afford relief against state officials on federal law grounds, specifically where the Constitution is violated by named state officials.

Ex Parte Young, 209 U.S. 123, 155-157.

7- Res judicata/collateral estoppel:

(a)- The first two cases were filed by Petitioner Pro se against the state, but not against named state officials. The two cases were dismissed under the Eleventh Amendment without litigation, therefore they have no legal value or legal effect of any significance, as if they were not filed. At that time, Petitioner was under the impression that he can file an Injunctive Relief without naming or serving state officials as individuals. The District Court simply dismissed the cases under Eleventh Amendment, stating that Petitioner did not name state officials. Therefore, these two cases did not have any legal value of litigation or any legal significance under the law.

(b)- The third case (B-94-211) was then filed by naming and by serving state officials as individuals, including their Staff Attorney as shown in court records. The District Court erred and dismissed the case against the Court's own statement, and against the declaration of the U.S. Supreme Court. In addition, there was no logical reason for the Court of Appeals to deny a Pro se Appellant his motion for extension time to file his appeal for the case filed against named state officials. This is contrary to the Court's policy of granting extension time, particularly to a Pro se Appellant against named officials.

(c)- This fourth case was filed by Petitioner's attorney Mr. Ron Armstrong when he came on board, in connection with Petitioner's filing, in order to address some points to the members of the board

and to fill some gaps in Petitioner filing. Mr. Armstrong's filing kept Petitioner's case in court, despite the erroneous dismissal of Petitioner's filing against named state officials, and despite the refusal of the Court of Appeals to grant Petitioner Pro se an extension time to file his appeal for the case against named state officials.

(d)- Respondent certainly knows that Petitioner's case in the State Court was not a state law suit against Respondent. It was simply a part of the appellate procedure that Petitioner must follow according to Respondent's bylaws, in order to exhaust all the legal procedures required by his bylaws. According to these bylaws, the State District Court acting as an Appellate Court, should have heard Petitioner's appeal, but instead, the Court denied to hear it at all. Justice was obstructed at the State level, and Petitioner was deprived from his day in court, even after he appealed to the higher State Courts, according to Respondent's Bylaws.

(e)- The above presentation shows that the third case was actually the only filing of legal significance which was assisted by the filing of Petitioner's attorney. The lower courts erred by the erroneous calculation of the cases, while in fact there is no truthful application of the issue of res judicata and collateral estoppel. It also shows that Petitioner did not have the actual intention to file five separate cases against Respondent. Petitioner was only attempting to satisfy the law and to comply by the required legal procedures in order to protect his license and his

professional qualifications from Respondent's illegal acts under color of law.

REASONS FOR GRANTING THE WRIT

In this case, the arguments amplifying the reasons for granting the writ, had to be mentioned with the questions for review and with the facts material to consideration of these questions. The reasons for granting the writ are hereby mentioned with the best effort to avoid unnecessary repitition:

1- The Supreme Court should grant the writ, because the four reasons mentioned in the opinion of the Court of Appeals to dismiss the case, all turned out to be false, erroneous, and are not applicable to this case, (Please also see #11 below). In addition, this case should not have been dismissed because the District Court has jurisdiction on the case pursuant to 28 U.S.C.A. 1331.

2- The Honorable Supreme Court should grant the writ because the most important truthful factual finding in this case is that the presumption of regularity has been rebutted, and that Respondent was proved to be lying and conducting fraud in his false charge against Petitioner, which makes this case unprecedented to the Courts, and to be beyond the expectation of the Courts to happen from Respondent, but the fact that it did happened. This reason by itself, calls for the District Court to exercise its jurisdiction pursuant to 28 U.S.C.A. 1331. Corruption

in public offices also falls under the Exception to the Eleventh Amendment, in order to preclude the use of the Eleventh Amendment itself from protecting acts of corruption. Petitioner is confident that the Supreme Court will not allow injustice to replace or to supercede justice.

3- By dismissing this case, the U.S. District Court, and the U.S. Court of Appeals, permitted and allowed the existense of a federal question of violation of public's rights beyond the parties involved in this case. This case is unprecedented to the Courts of law. Respondent caused to set up a dangerous precedent that was sanctioned in every level of federal courts to allow Respondent to displace and to isolate physicians from the professional medical communities, and to cause total damages to their professional qualifications by Respondent's wanton and reckless acts of making laws unto himself, in conflict with federal law and in conflict with the jurisprudence of the Supreme Court, with the result of depriving the public from the medical services of these qualified physicians, in addition to depriving these physicians from their equal opportunities anywhere in the United States.

4- The U.S. Court of Appeals for the Fifth Circuit, entered a decision in conflict with the decision of the U.S. Court of Appeals for the Third Circuit on the same matter of this case as in the case of HAFER vs. MELO, et al.

5- The U.S. District Court departed from the usual course of judicial proceedings, and the U.S. Court of Appeals sanctioned the decision of the lower

Court by adopting erroneous factual findings. The Courts persisted to give courtesy and credit to Respondent by ignoring the fact that the presumption of regularity has been rebutted, and that Respondent lost his credibility beyond any reasonable doubt, due to his intentional fraud and lying in inventing a false charge against Petitioner, in order to deprive Petitioner from his equal opportunities under the law.

6- The U. S. District Court departed from the usual course of judicial proceedings, and the U.S. Court of Appeals sanctioned the departure. The Courts erred by adopting erroneous findings that caused obstruction of justice, by changing the title of the case in order to make believe, under color of law, that the Eleventh Amendment is a reason to dismiss the case.

7. (a)- The U.S. District Court departed from the usual course of judicial proceedings, and the U.S. Court of Appeals sanctioned the departure. The Courts erred by attempting, under color of law, to show that the issue of res judicata/collateral estoppel is applicable to this case in order to dismiss it. Page 13 #7,a,b,c,d,e.

(b)- In this case, there is no application of the issue of res judicata and collateral estoppel. The Court of Appeal erred by referring to the previously dismissed case No. 94-60776, which was different from this present case in four essential legal aspects that makes the two cases uncomparable. First, this present case No. B-94-55 is against named state officials. Second, this case has new evidence of Respondent's fraud and lying

under color of law. Third, this case has the additional issue of the total damages to Petitioner's professional qualifications caused by Respondent. Fourth, this case legally falls under the jurisdiction of the District Court pursuant to 28 U.S.C.A. 1331. This precludes any similarity to the dismissed case No. 94-60776. Meanwhile, case No. B-94-55 falls under the Exception to the Eleventh Amendment which also precludes the application of the Eleventh Amendment.

8- The U.S. District Court, and the U.S. Court of Appeals erred by misapplication of the Eleventh Amendment while ignoring the Exception to Eleventh Amendment, as properly stated laws by the Supreme Court. This case in conjunction with case No. B-94-211 are against named state officials. According to declaration of the Supreme Court, the Eleventh Amendment does not barr from filing this case against named state officials for an action conducted under color of law.

9- The Writ should be granted because the foregoing indicate that:

(a)- The Eleventh Amendment does not apply to this case, and does not bar this claim against named state officials.

(b)- The Exception to Eleventh Amendment prevents the application of the Eleventh Amendment itself to this case, since Respondent made laws unto himself under color of law, against federal laws by his reckless and wanton exceeding of his jurisdiction by causing total invalidation of Petitioner's professional qualifications against federal law, and by depriving him from his equal opportunities

in all the states of the Union.

(c)- This case was originally initiated when Respondent began to make up a false charge against Petitioner by using fraud and lying under color law which was not precedented to the Courts. The case then ended by making up false erroneous factual findings under color of law, that are in complete contradiction with the truthful factual findings in the case, in order to make false reasons to dismiss the case.

10 The Supreme Court should grant the writ, because the material facts of this case proved that this is one of the cases where the Eleventh Amendment cannot be applied to protect an act conducted under color of law, because Respondent by now has already gained an illegal nationwide authority over federal law that allows him to disable Petitioner, or any other health care providers, by displacing and by isolating them from the medical profession, and by totally invalidating their professional qualifications under color of law. Subsequently, this deprives the public in Texas and in all the United States, from gaining the benefits of the services of these fully qualified physicians under Federal Laws. Thus, this case is of public importance to the Honorable U.S. Supreme Court.

11- From the foregoing, it can be summarized and can be concluded that all the four reasons mentioned in the opinion of the Court of Appeals to dismiss the case, have all turned out to be false and erroneous because of the following:

(a)- The Eleventh Amendment does not apply to this particular case, while the

Exception to Eleventh Amendment does apply to this case.

(b)- Petitioner's claim in this case is pursuant to 42 U.S.C. 1983, against named state officials for conducting an act of fraud and lying under color of law, to invent a false nonexisting charge against Petitioner, in order to deprive him from his equal opportunities in civil life. This puts this case under the jurisdiction of the District Court pursuant to 28 U.S.C.A. 1331.

(c)- The issue of res judicata and collateral estoppel proved to have no application in this case.

(d)- This case is not similar to the previous case No. 94-6776 that was rejected by the Court of Appeals. This case has additional issues as follows:

(i)- This case was filed against named State Officials.

(ii)- Additional evidence of fraud by lying under color of law, proving that the presumption of regularity has been rebutted by unchallenged proofs in Court records that made this case to be unprecedented to the Lower Courts.

(iii)- Additional proved charge that Respondent acted under color of law and caused total extensive irreparable damages to Petitioner's professional credentials and qualifications.

(iv)- Court records show that this case falls under the jurisdiction of the U.S. District Court pursuant to 28 U.S.C.A. 1331.

12- The Supreme Court should grant the writ, because by consideration of all the foregoing, it is reasonable to conclude that this case contains several elements that makes it an unprecedented case to the Lower Courts, which attributed to the erroneous findings by the Lower Courts.

13- The Supreme Court should grant the writ because this case is an issue of extreme public importance to the Supreme Court. Petitioner believes that the Supreme Court will not allow this case to be cited as a precedent in the courts of law, by Respondent or by any other state medical board, for the conduct of actions under color of law for the purpose of displacing or isolating physicians from the professional medical communities that are serving the public, or in order to cause irreparable damages to their professional qualifications, thus invading on public's rights by depriving the public from the professional services of these qualified physicians.

CONCLUSION

For the reasons stated above, Petitioner prays that this Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED, this May 7, 2000.

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APPENDIX

(A)- OPINION OF THE U.S. COURT OF APPEALS

In the United States Court of Appeals for the Fifth Circuit.

Case No. 99-40687 USDC No. B-94-CV-55

Tharwat M. Hamamcy, Plaintiff-Appellant, vs. Texas State Board of Medical Examiners, Defendant-Appellee.

Filed: February 17, 2000

Appeal from the United States District Court for the Southern District of Texas

Before EMILIO M. GARZA, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Tharwat M. Hamamcy filed a complaint in federal district court against the Texas State Board of Medical Examiners (the Board) under 42 U.S.C. 1983 alleging that the Board denied him due process and equal protection in revoking his medical license. The Board moved to dismiss the complaint, arguing that it is barred by the Eleventh Amendment to the Constitution, that Hamamcy failed to state a claim under 1983, and that the suit is barred by the doctrines of res judicata and/or collateral estoppel owing to the fact that five other state and federal law suits filed by Hamamcy against the Board have all terminated in the Board's favor. The district court granted the motion to dismiss.

We have previously rejected claims by Hamamcy against the Board arising from the

revocatin of his medical license, on the ground that the Board was entitled to Eleventh Amendment immunity. Hamamcy v. Texas Bd. of Med. Exam'rs, Case No. 94-60776 (5th Cir. June 29, 1995) (unpublished).** Hamamcy did not brief the res judicata/collateral estoppel basis of the district court's dismissal, and he has thus abondoned that issue. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). The district court's grant of the motion to dismiss may be affirmed on this theory. See Sojourner T. v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (court may affirm judgment on any basis supported by the record).

This appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. 5th Cir. R. 42.2. Appellant is cautioned that any future frivolous appeals will be subject to the imposition of sanctions. DISMISSED.

Foot notes:

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

* Although the published opinions issued on or after January 1, 1996, are not precedent, they may nevertheless be persuasive. See 5th Cir. R. 47.5.4. Further, such opinions do have precedential value under the doctrines of res judicata and collateral estoppel.

(B)- IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, BROWNSVILLE DIVISION.

Date entered: May 28, 1999
Civil Action No. B-94-55
Tharwat M. Hamamcy, Plaintiff, vs.
Texas State Board of Medical Examiners, Defendant.

FINAL ORDER:

1. Defendant Texas State Board of Medical Examiner's[sic]Second Motion to Dismiss[Dkt. No. 76] is GRANTED.

2. The causes of action against Defendant are DISMISSED WITH PREJUDICE.

3. Future filings by PLAINTIFF THARWAT M. HAMAMCY arising from the revocation of his medical license will subject THARWAT M. HAMAMCY to sanctions pursuant to Fed. R. Civ. P. Rule 11.

4- All pending motions in this case filed by PLAINTIFF THARWAT M. HAMAMCY ARE DENIED.

DONE at Brownsville, Texas, this 28 day of May 1999.

s/ Hilda G. Tagle
United States District Judge

(C)- FEDERAL HEALTH REGISTER, Health Rules and Regulations:

Qualifications of Physicians for serving the public and for hospital staff privileges, Vol. 51, No. 116, Health Rules and Regulations, Dept. of Human Services.

These rules and regulations must be followed by all approved hospitals and state medical boards, in order to meet the

standard criteria of qualifications for licensing of physicians, and for granting hospital staff privileges in order to serve the public.

(D)- This Case, Court of Appeals No. 94-60776, District Court No. B-94-55, was filed in connection with case No. DC, B-94-211 against all individual members of the board, et al, in which each member of the Board was served individually. District Court's records show that the two cases were proceeding as such against all individual members of the board, et al.

(E)- Letters from Respondent to Petitioner

1- Letter Dated January 16, 1989. Dear Doctor Hamamcy: This Board has received one or more complaints indicating that you may have violated the Medical Malpractice Act, Article 4495b, Tex. Rev. Civ. Stat. Ann.....etc.

s/ Bill Campbell
Staff Attorney

2- Letter dated December 22, 1988. Dear Doctor Hamamcy: I wish to inform you that we have received an allegation against you.....etc.

s/ Joe Franko
Director of Investigations

(F)- ARTICLES IN LOCAL NEWSPAPERS:

By Patricia A. Gonzalez, Herald Staff Writer: .....Hamamcy was charged with practicing medicine and prescribing medication without a license. The revocation of the license was a result of nine complaints filed with the medical board by patients who Hamamcy examined from April 28, 1986 to June 14, 1989. In the complaints, six women alleged that the doctor failed to document patient medical records to show an accurate medical history. Patients also claimed that Hamamcy did not use an intravenous (IV) solution during surgery. He was also accused of charging a patient three times for the same treatment.

(G)- RESPONDENT'S ADMINISTRATIVE HEARINGS

Records of Respondent's Administrative Hearings documented and affirmed in several places that the three Respondent's expert medical witnesses, all testified unanimously, that Petitioner did not violate the medical practice act, and did not cause any injury to any one of these nine patients.

(H)- OFFICIAL INVESTIGATIVE REPORT

This report was submitted to the U.S. District Court, as part of the records on file. It included all the names and addresses of the alleged nine patients. A licensed investigator, Mr. Richard Alaniz,

obtained a personal recorded interviews under oath from each of these alleged patients, who all denied ever filing a complaint with the Texas Board of Medical Examiners against Dr. Tharwat M. Hamamcy. Each Patient was asked to provide a voluntary recorded statement, and all voiced concern about their names being used without their knowledge and without their concent. Each person in the report stated that they did not provide any authorization or concent to the Texas Medical Board, or to any agent or representative, to use their names in any disciplinary action against Dr. Hamamcy.

s/ Richard Alaniz
Seal of Notary Public, State of Texas,
Expires 08.21,99

(J)- UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION
Case No. C.A. No. B-94-055
Tharwat M. Hamamcy vs
Texas State Board of Medical Examiners
Date: May 21, 1998.

ORDER

All pending motions filed on or before April 14, 1998, are hereby denied without prejudice. Any party may re-urge any of these motions should the need arise. For purposes of timeliness and waiver, the initial date of the filing shall be controlling. IT IS SO ORDERED.
DONE at Brownsville, Texas, this 21st day of May, 1998.

s/ Filemon B. Vela
United States District Judge

(K)- Case No B-94-055, U.S. District Court

Petitioner's Motion to Forward a Complete Caption of the Case to the U.S. Court of Appeals.
Date of Motion: August 25, 1999.
COMES NOW, Tharwat M. Hamamcy, Plaintiff / Appellant, respectfully to request the Court to forward a caption of this case to the Court of Appeals to read as follows according to records on file and according to the case as it has proceeded in Court:

THARWAT M. HAMAMCY, vs TEXAS STATE BOARD OF MEDICAL EXAMINERS, AND ALL INDIVIDUAL MEMBERS OF THE BOARD, et al.

(L)- IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, BROWNSVILLE DIVISION

CASE NO. B-94-55

Tharwat M. Hamamcy,.....Plaintiff,
vs.
Texas State Board of Medical Examiners, et al,.....Defendant.

ORDER

BE IT REMEMBERED, that on September 22, 1999, the Court considered Plaintiff THARWAT M. HAMAMCY's motion to forward a complete caption of the case to the Court of Appeals (Dkt. No. 91). Considering the fact that the entire file has been forwarded to the United States Court of Appeals for the Fifth Circuit and the lack of explanation in Plaintiff's motion, this Court will not forward anything further.

Should the Fifth Circuit require any information, the clerk of that Court should contact this Court. The Plaintiff should not make such a request.

The Court reminds Plaintiff THARWAT M. HAMAMCY of its admonishments in the FINAL ORDER that future filings by Plaintiff THARWAT M. HAMAMCY arising from the revocation of his medical license will subject THARWAT M. HAMAMCY to sanctions pursuant to Fed. R. Civ. P. Rule 11.
DONE at Brownsvill, Texas, this 27th day of September 1999.

s/ Hilda G. Tagle
United States District Judge

(M)- U.S. DISTRICT COURT
TXS - SOUTHERN DISTRICT OF TEXAS
(BROWNSVILLE).

CIVIL DOCKET FOR CASE #: 94-CV-55

Hamamcy, et al, v. Texas State Board of

Filed: 04/15/94 Nature of Suit: 440
Jurisdiction: Federal Question
Assigned to: Judge Hilda G. Tagle
Demand: $0,000
Lead Docket: None
Cause: 42:1983 Civil Rights Act.
